Developmental Disabilities Waiver
Public Comment and BDS Response
May, 2021

The State provided public notice of opportunity for public comment for the Developmental Disabilities Waiver Renewal in accordance with 42 CFR §447.205 for the public comment period of 1/11/21-2/12/21. Access to the full waiver was made available both electronically (via the Bureau of Developmental Services Website) and hard copy. A Public Notice of four Public Comment forums and Notice of Opportunity for Public Comment was distributed via newspaper and email. All forums were held via zoom due to Covid-19.

The first forum was held on 1/25/21 with 38 participants (9 DHHS + 3 IOD + 26 Stakeholders), the second on 1/28/21 with 25 participants (3 DHHS + 3 IOD + 19 Stakeholders), the third on 2/2/21with 20 participants (3 DHHS + 3 IOD + 14 Stakeholders) and the fourth on 2/11/21 with 40 participants (6 DHHS + 3 IOD + 31 Stakeholders). Feedback was received and captured during the forums.

Additionally, BDS received electronic feedback from 8 stakeholders via email. There was no feedback received via post mail. A summary of the comment by theme is outlined below, including a response from the Bureau of Developmental Services.

**Assistive Technology**

**Comment:** Would laptops count as an assistive technology service? If an individual is doing Zoom for schooling?

**BDS Response: If the laptop is acting as assistive technology that would help the individual achieve a specific goal that is identified as a goal in the Service Agreement, then yes it could be covered as it is supported by assessments, evaluation, and identification in the service agreement through a goal. The Waiver does not pay for educational services.**

**Comment:** Under Assistive Technology the service model box is blank, and the service provider boxes are all unchecked as well. It is our recommendation that these services be available in both the Participant Directed and provider managed service models.

**BDS Response: The service delivery methods have been updated to include both the Participant Directed and provider managed service models.**

**Comment:** Is “service animal” following the federal definition vs. a “therapy animal”?

**BDS Response: Under the Americans with Disabilities Act (ADA), a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person with a disability.**

**Comment:** The waiver does not address BDS's commitment to the use of communication assessments and planning for waiver participants who face difficulties in communication. The collection of additional data pertaining to the needs of these individuals is recommended. Over the last year, BDS has made some commitment to the use of communication assessments and planning for waiver participants who face difficulties in communication.

The state must support and fund the area agencies and providers to assess the communication needs of the people they serve. We recommend the state collect data relative to this need and use said data to assess implementation of services.

**BDS Response: Assistive technology includes the evaluation of a waiver participant's technology needs including a functional evaluation not otherwise covered by the state plan. Annually, at the person-centered planning meeting, each service recipient and/or their guardian are asked to indicate any unmet needs.**

**Community Integration Services**

**Comment:** Does the change in service definition from "Recreation" to "Community Integration Services" change the requirements for farmsteads to qualify under HCBS funding?

**BDS Response: The change from recreational service to community integration services does not affect the requirements for providers to meet settings requirements under HCBS funding. Settings requirements apply to any provider who is accepting Home and Community Based funds. Under the final rule setting, the HCBS requirements still apply in the same way.**

**Comment:** You had noted that the service limit is $8,000 for Community Integration Services, which I believe you noted had replaced the recreation/therapeutic rec service. I am speaking specific to PDMS budgets. You had noted that anything over $2,000 will require formal medical recommendation/letter of necessity. Does this mean that rec lines under $2,000 will not require a medical letter of necessity? Say for things like: Gym Memberships, horseback riding, adaptive skiing, etc.? The current state template for PDMS, notes a $1200 cap for Recreation. Will this recreation cap be different under the new waiver given the change in language being used for recreation?

**BDS Response: This is accurate, yes. If the request is over $2,000, it requires a letter. The service limit is different under the new waiver at $8,000.**

**Comment:** Regarding the $2,000 cap in Community Integration Services: Is it $2,000 total or 1 item costing over $2,000 that we need additional recommendation/letter?

**BDS Response: BDS has updated the definition to reflect any single service over $2,000 will require a licensed healthcare practitioner's recommendation with the exception of camp.**

**Comment:** Community Integration Services indicates a justification is needed for items at $2,000. It is recommended that the waiver also specify if the justification is needed if one item is over $2,000 or if justifications are needed after several items add up to exceed the $2,000. We are open to either option and recommend the waiver be clarified to express that decision.

**BDS Response: Thank you for your feedback. See above response.**

**Comment:** Pg.75- Therapeutic Recreation is no longer in individual budgets but must go through Community Integration Services (CIS). Concern-this will require additional residential clients to join CIS services in order to separately invoice activities like swimming or horseback riding but would also include in program supplies for art/crafts, therapy workbooks, DBT supplies, behavioral sensory items

like fidget objects, weighted blankets, bite necklaces, etc. Receipts must be kept on file in records for 6 years?

Will this require additional and separate PA's?

This could delay services and become very labor intensive to track and invoice separately.

Concern: Additional staff may be needed to request and track PAs, report approvals to teams and invoice accurately without overspending the limit of $2,000 and then acquiring licensed person for recommendation up to $8,000. Licensed person will likely also cost to evaluate and that would be additional PA and funding request.

I am concerned that this multi-layered system of compounding several requests to acquire one service will interfere with the timely services and cost to the client.

**BDS Response: Community Integration Services should be outlined in the person-centered plan and require a prior authorization. There has been no change in documentation requirements to support Medicaid expenditures.**

**Comment:** Did you say that camps had to be inclusive and not for people with disabilities for it to be covered? The camp (Camp House) I am speaking of is specific for individuals with Down Syndrome and held on a college campus but there are volunteers for the camp who do not have a disability of a similar age, but they are paired on a one to one basis. My concern is when you have a child who is 28 years old, they will not go to a typical camp, so the options are only camps for people with disabilities. Some activities are on the college campus and some are off the college campus.

My daughter participates in Friends in Action on the Seacoast provides social, recreational and educational programs from people with disabilities. They go to the dining hall, have physical activities with UNH Occupational Therapy/Kinesiology students and they do different activities. Would this be a community-based program for Community Integration Services? I use Medicaid money to help cover this cost.

**BDS Response: Yes, the goal is that the camp ensures inclusion of the individual in the community. The goal is to ensure that the camp is not segregated from the general population. HCBS waiver dollars are limited to activities and items that are home and community based. The camp setting must be integrated in and support full access to the community. A community-based camp means in the community and not an isolated camp where there is no involvement of the community.**

**Friends in Action's mission is to enhance the lives of people with developmental disabilities by creating inclusive social and recreational opportunities. Based on their mission it does appear to be integrated. There are other criteria in determining if CIS funds can be used to participate which are outlined in the service definition outlined in the waiver.**

**Comment:** Can the campership be to a camp that specializes in campers that experience autism (for example)?

**BDS Response: We will need to look at the specific camp. If it is open to the general population, we can propose it is not segregated from the community.**

**Comment:** I feel like there is a conflict between allowing people to feel a part of their community and restricting people's choices of where they want to be. Is this needing to be changed at the state or the federal level? I feel as though every individual has freedom of choice. This goes back to other community activities as well. For example, the Spark Center in Lebanon is open to the general public but is more used by people with disabilities so it cannot be billed for a cooking class because there are often not people without a disability there.

**BDS Response: By providing a public comment, your comments will be included as a comment in our application at a federal level. HCBS settings rule is a rule at the federal level that all states must be in compliance with. The dollars in the waiver are Home and Community Based and the federal government entity want to ensure services are offered within the community.**

**Comment:** Amen to what Bobbi is saying about choice! Together for Choice works at the federal level to allow choice. Check out www.togetherforchoice.org

**BDS Response: Thank you for your comment.**

**Comment:** We need to be clear that being community based can't be too dependent on there not being too many others there that also experience disabilities. It feels like a type of discrimination.

**BDS Response: Non-residential settings may vary in how they meet the HCBC settings requirements. The person-centered plan should indicate if the setting is integrated into and supports full access of the individual to the community. In addition the service agreement should indicate the setting is selected by the individual from a variety of options including non-disability specific settings and is based on the individual's needs and preferences.**

**Comment:** It does not appear that any consideration has been given to the fact that accessing the community is going to be much more limited in the next several years due to social distancing etc.

**BDS Response: The allowance of telehealth provides for some level of consideration for this fact. If there is anything more you recommend we do to highlight this recommendation please let us know.**

**Comment:** Many commenters were concerned about camperships and how/if they would be covered. Non-integrated camperships are not included, which may be limiting and shifts costs to generic resources where this type of experience may truly benefit an individual's skill development. One example may be a camp that specializes in building life skills for individuals with autism. If a family or individual feels that such an experience can provide significant benefit, perhaps not being able to use CIS for this is taking that choice off the table.

**BDS Response: Non-residential settings may vary in how they meet the HCBS settings requirements. The person-centered plan should indicate if the setting is integrated into and supports full access of the individual to the community. In addition the service agreement should indicate the setting is selected by the individual from a variety of options including non-disability specific settings and is based on the individual's needs and preferences.**

**Community Support Services**

**Comment:** If an individual is currently receiving Community Support Services (CSS) because they do not need a full day program and want hours to work on independent living skills / community access but do not intend to move out of their family home, would they have to use CPS (for example 5 hours per week)? Is there any room in SEP for these supports? Could CIS or the Wellness Coaching be used?

**BDS Response: The limit on CSS indicates that there is 24-month period of time that they can utilize CSS when living in their family home, as it is meant to be utilized as a transitional service. CPS, SEP, CIS or wellness could be explored as potential services depending on what type of support is being provided.**

**Comment:** What about CSS for people who live in their own homes?

**BDS Response: If an individual lives independently they can receive CSS services indefinitely for 30 hours per week.**

**Comment:** Community Support Services, we are making the recommendation to have levels as outlined in Day Habilitation included in CSS. It has been our experience that there are different levels of CSS needed depending on participant. For example, those who are using CSS services who experience mental health needs tend to need more skilled staff and different level of CSS services. We are also recommending rate development should occur in levels as well, though we recognize that is something to be explored beyond the waiver.

**BDS Response: Thank you for your feedback.**

**Comment:** DD Waiver Draft has great language allowing the Bureau of Developmental Services to exceed a cap or timeline. The Community Support Services Section does not include the option for BDS to exceed that timeline up on an individual review. It is our recommendation that be added.

**BDS Response: The waiver has been updated as follows: "The BDS reserves the right to exceed the cap and/or time limitations placed on this service on a case by case basis".**

**Crisis Response**

**Comment:** Crisis Response Services does not have the box checked for Participant Directed models. We believe Crisis Funds are also needed in this program at times. In addition is does not state that a legal guardian or legally appointed adult can provide these services.

**BDS Response: The service delivery methods have been updated to include both the Participant Directed and provider managed service models. The waiver has been updated to include legal guardian. Crisis response services do not permit a legally responsible person to be paid to provide this service.**

**Comment:** On Pg. 81 Crisis Response Services, will there be an expedited funding process for all the services including first time SSL request needed to support emergency services?

**BDS Response: BDS will continue to work in collaboration with area agencies to ensure the health and safety needs of waiver recipients are met.**

**Comment:** The standards for crisis response services providers should be more clearly defined including expertise in de-escalation or other tools to meet the needs of the individual with developmental disabilities in a crisis. Consider the expectations for mobile crisis providers as model. Consider the recommendations from the SB 86 and HB 4 reports in this area.

**BDS Response: Thank you for your feedback.**

**Community Participation Services**

**Comment:** Language around the community participation services (CPS) are delivered primarily outside the individual's home. I would advocate to think less about physical location and more about meaningful engagement. Being outside of the home does not always equate to being in the community. The focus needs to be on being meaningfully engaged in the community for the individual's needs, likes, their community, etc. Some people are reporting increased access to community by being at your home more. I want to not limit the creative view of what community participation is.

**BDS Response: Thank you for your feedback in support of the option to participate in services remotely.**

**Comment:** It still seems like the majority of the time needs to be out in the community for CPS in the way the waiver is written. We have many people that we do not want to have in the community for a large part of their day.

**BDS Response: Thank you for your feedback.**

**Comment:** The Appendix K is allowing for more flexibilities in where, when how and by whom CPS services are provided. Is there any consideration of adding this to the full waiver?

**BDS Response: The flexibilities that have been taken from Appendix K include telehealth and allowance of providing service in an acute setting and have been added to the CPS waiver definition.**

**Comment:** In the Day Habilitation section on page 52, it allows that these services be provided by a relative. The boxed to permit a legal guardian or a legally responsible adult is not checked. In Participant Directed and Managed Services there is an option to pay these specific roles to provide services (see page 101). It is recommended to review page 101 and align all service types to include legal guardian or legally appointed adult to align.

**BDS Response: Thank you for your feedback. The waiver has been updated to include legal guardians. Community Participation Services do not permit a legally responsible person to be paid to provide this service.**

**Environmental and Vehicle Modification Services**

**Comment:** Was the fencing limit increased in this draft? I recall there were several requests for that during the listening sessions. It has been the same for many years and the cost of labor and materials are now significantly higher.

**BDS Response: The waiver allows the Bureau Administrator or their designee to make an exception to this service limitation based on a case by case basis.**

**Comment:** Is adding square footage to the home the same as adding to the footprint of a home? It has been my understanding this is not allowed.

**BDS Response: Yes, adding square footage to the home is the same as adding to the footprint of a home.**

**Comment:** One commenter wanted consideration given to the idea of allowing the purchase of an already modified vehicle if less than the cost of modifications to an existing vehicle.

**BDS Response: We appreciate this recommendation. CMS excludes the use of waiver funds for the purchase or lease of a vehicle.**

**Individual Goods and Services**

**Comment:** Could you give some examples of individual goods and services?

**BDS Response: Some examples may include reimbursement for helmets or other protective equipment, services that assist with residential independence such as housecleaning, medication reminders, shopping services, etc. This list of examples is not intended to be exhaustive and consideration for goods and services is based on an assessed need as documented in the individual service plan.**

**Non-Medical Transportation**

**Comment:** In relation to Transportation- Non Medical - does UBER qualify?

**BDS Response: A transportation agency registered with the state to provide public transportation is an approved standard as a provider for this service.**

**Comment:** Does transportation in SEP or CPS allow for the use of a cab?

**BDS Response: Taxi services are allowed under non-medical transportation. If transportation services are provided under SEP or CPS the service must be delivered by a provider that meets the qualifications of these services, therefore a taxi would not be acceptable for transportation under SEP or CPS.**

**Comment:** When the $5,000 is the cap and then there is an additional cap at $10,000 if approved under the necessity of health and safety. If someone is using transportation to get to work and they exceed that limit, would this be an allowable extension for their health and safety?

**BDS Response: If the transportation is not covered under the scope of another service received, the BDS administrator reserves the right to approve requests that exceed the cap.**

**Comment:** How will the transportation be billed? Sometimes with SEP, part of this is helping get the person to work. Is this part of the SEP budget or is this separate?

**BDS Response: When combined with another employment service, transportation and training in accessing transportation, as appropriate, to and from work should be included within the SEP budget. If the transportation is not covered under the scope of the SEP service then it should not be included within the SEP budget and non-medical transportation can be explored.**

**Comment:** Seems to be broad for exceeding a cap for many of the waiver services, but it seems more limited in this service area rather than keeping it broad. For example, what if someone is exceeding this cap due to needing to use transportation for employment?

**BDS Response: Thank you for this feedback. The "health and safety" stipulation has been removed and replaced with the following: "The Bureau of Developmental Services Administrator reserves the right to approve requests that exceed the cap in cases when the cap must be exceeded on a case by case basis. Proof of this need to exceed the cap will be required upon request to the Bureau of Developmental Services. In the event that an individual requires additional transportation resources to ensure his/her safety, BDS will consider approval of additional funds for transportation based on a statement of clinical necessity submitted by the individual's service coordinator and as articulated in the individual's service agreement." With regard to exceeding the cap on transportation, the provider is encouraged to access other resources available for transportation assistance.**

**Comment:** It was mentioned that medical transportation under the State Plan – people who receive 24 hour staffed residences and many of the transportation is to medical appointments. Can you not use this line item for medical appointments, and they would be through the State Plan? This is not an effective or reliable form of transportation.

**BDS Response: Medical transportation is a State Plan service and must be billed through the State Plan.**

**Comment:** Is there any argument to be made that the transportation cap should be increased simply by cost-of-living factors?

**BDS: Yes, we can include this in our public comment. It should be noted that since January, 2020 there have been two Medicaid rate increases of 3.1%.**

**Comment:** Does that include transportation to and from community activities with a staff person?

**BDS Response: If community activities with a staff person are included within the scope of a service, payment for that service is inclusive of transportation. If the transportation is not covered within the scope of the service non-medical transportation can be explored.**

**Comment:** It is excellent to be able to use taxi services (under non-medical transportation) and to get individuals to and from work.

**BDS Response: Thank you for this feedback.**

**Comment:** Several commenters were concerned about the cap for transportation. A $5,000 cap, if all transportation is billed separately from the service (i.e. mileage within CPS services), and includes a new option for additional transportation, will not be sufficient.

**BDS Response: Thank you for your feedback. Transportation included within the scope of a service does not count towards the non-medical transportation cap.**

**Comment:** Several commenters wanted a consistent definition of how BDS would increase the caps listed on various services. The current draft describes the process differently in various sections of the waiver. Specifically for transportation, commenters wanted to enhance the reason for an increase to include maximum flexibility to access the community.

**BDS Response: Thank you for your feedback.**

**Comment:** I have tried to use Medical Transportation through the State Plan by using my insurance. My insurance had me take a Lyft to the doctor. Lyft has to call the doctor two days prior to verify the appointment. Then you do not have the app on your phone as you are not paying for the Lyft. But then you do not know when they are coming, what the type of car is, and the license plate number that you normally know when you arrange your own Lyft. This was the only option I was given through my insurance.

**BDS Response: We recommend that you discuss your challenges with the MCO and see what their suggestions are to address the issue. A link to the NH DHHS Website with the contact information for the Managed Care Organizations is here: https://www.dhhs.nh.gov/ombp/caremgt/index.htm**

**Comment:** One commenter stated that it is critical that expenses for parking, tolls and related expenses are included in the non-medical transportation services category.

**BDS Response: Thank you for your feedback. The definition of non-medical transportation has been updated to reflect parking and toll fees.**

**Comment:** One commenter wanted to know what would constitute verification for specialized transportation needs up to $10,000. If a request for a barrier between driver and client were requested, how would that request be validated as essential?

**BDS Response: All requests will be evaluated based on the individual's specific needs as outlined in their service agreement.**

**Personal Emergency Response Services**

**Comment:** Is Personal Emergency Response Services (PERS) proposed annual $2,000 and would an SSL be needed for use of these funds? When filing a budget/a fiscal package for someone, I have put in a SSL in a coversheet for Specialty Services.

**BDS Response: PERS annual service limit is $2,000 per person. PERS will have its own code and won't be connected to SSL (Specialty Services) and will have a line item in a budget so it will be completely separate. Must have justification in the proposal.**

**Comment:** How did you determine the $2,000 limit on this service?

**BDS Response: The $2,000 limit is consistent with a look back of what has been spent in this area, as well as being consistent with other waivers (it is the limit in the IHS waiver as well).**

**Comment:** Please give an example of "restrictive"

**BDS Response: If there is a system to announce your whereabouts via GPS, this may need to be reviewed by a Human Rights Committee (HRC). If you have a need for a specific lock that may restrict your access to the community, this would need to be reviewed by HRC. If you are unable to gauge distance around stairs, a gate installed at the top and bottom of stairs would be considered restrictive and needs to be approved by HRC. Video monitoring may be an example to ensure the individual is safe in their environment in lieu of having a staff physically present.**

**Residential Habilitation**

**Comment:** Why was Personal Care removed from the Residential Habilitation service name?

**BDS Response: Personal care was removed from the Residential Habilitation service name to be consistent across our three waivers and keep it consistent in terms of the definition.**

**Comment:** Residential Habilitation on page 57 also indicates that reference to the 521 and 525 outline the need for qualifications and references the 503. We are recommending clarity in the waiver around if 525 and 521 programs can make selection of qualifications or if the entirety of the 503 is to be followed. It has been a gray area in the implementation of the program. It is our recommendation that the waiver be clear on which is to be followed rather than reference all three.

**BDS Response: Currently the waiver references He-M 506, He-M 521, He-M 525 and He-M 1001 for provider qualification and training requirements. The state administrative rule to be followed is determined by the certification type. BDS will consider reviewing and clarifying rules.**

**Respite**

**Comment:** For respite services it indicates that all respite qualifications are the responsibility of the area agency. It does reference Rule He-M 513. It should clarify that in Family Arranged Respite the family determines qualifications. The lack of clarity would require background checks on all respite providers. The benefit of Family Arranged Respite is that families can choose someone they know and trust with

maximum flexibility. Requiring a background check limits the flexibility for families to respond. It is our recommendation that the language include except in the case of Family Arranged Respite per He-M 513. There was agreement form two other participants.

**BDS Response: Thank you for your feedback. The verification of provider qualifications for family arranged respite has been updated in the waiver to reflect the responsibility to verify provider qualifications is at the discretion of the family.**

**Comment:** How can we differentiate between training and regular respite?

**BDS Response: You would differentiate this by working with the family to determine how they are using their respite. BDS has removed the following language from the waiver: "In a PDMS budget, the cost of training family managed employees will be outside of the total funds available for respite. The cost of training will not count toward the 20% respite service limitation" Training costs for family managed employees shall be included within the service category that they are providing. Training for a respite provider should be included within the allocated respite budget.**

**Comment:** We note that the waiver application includes requirements for criminal background checks for respite providers. Furthermore, we note that there is a 10-year lookback for criminal records. New Hampshire, like so many other states, has been in a workforce shortage for several years as a result of low unemployment and a 13-year hiatus in rate increases. We strongly encourage BDS to consider areas within the waiver application, such as modifying the 10-year lookback period that can result in hiring process improvements, and other strategies to support workforce growth.

**BDS Response: Thank you for your feedback. He-M 506.03 (f-h) allows for a provider agency to hire a person with a criminal record for a single offense that occurred 10 or more years ago.**

**Service Coordination**

**Comment:** One commenter suggested eliminating the noted shared service coordination found on page 66 stating that it would create challenges related to decision making, exploitation, and rate of pay. Although in full support of external case management and provider selection, they did not support shared case management.

**BDS Response: Thank you for your feedback. The language in waiver is aligned with He-M 503.08(h). As we continue our work on our Conflict of Interest Corrective Action Plan, BDS will be reviewing rules to ensure they meet the requirement of the Corrective Action Plan.**

**Comment:** We continue to advocate that individuals and families should have the right to choose to have their service coordination and services from the same agency, as a fully informed choice, and when the agency is able to clearly demonstrate that they continuously employ proper firewalls to ensure the separation of these functions. Where the waiver draft references that families have "full choice," it omits that under current CMS rule, they do not have the option to choose such an integrated model.

**BDS Response: Thank you for your comment.**

**Comment**: On Page 65, the process for removing a service coordinator is outlined. In it, the area agency is responsible for designating a new service coordinator, with input from the individual and guardian and/or other supporter. It is critical that the individual with support from the guardian if appropriate, selects the new case manager.

In addition, BDS must put procedures in place to ensure that area agencies are facilitating the selection of an independent case manager quickly if they are to be responsible for entering into agreements with independent case managers before they can begin providing and billing for case management services.

**BDS Response: Thank you for your feedback.**

**Comment:** My interest in commenting on the proposed DD waiver is related to the service coordination (case management) provisions. My concern lies with the consequences of reducing case management to a quasi para professional service of some sort, which it is not. I first raised my concerns at a public meeting where the department presented a NH Map to map the available case management resources and included only Area Agency related resources. None of the existing Independent Case Management entities were included as a resource, not even the entities who were actually providing services to recipients of the DD waiver, albeit through payment from the Area Agency system.

The qualifications described for service coordination (case management) utilized in this proposed DD waiver document appear to be yet another thinly veiled attempt to once again circumvent the federal mandate that NH provide legitimate conflict free case management from qualified Medicaid providers in this waiver.

The State of NH requires a license for the provision of Case Management under RSA 151. The language used in this proposed DD waiver renewal appears to intentionally circumvent that requirement. by stating “None” in the licensure box. Calling case management by another name, in this case “service coordination” does not remove the federal or state requirements for the service meeting the criteria established in statute or rule.

The definition provided in the waiver “Service Coordination: Services which will assist eligible individuals in gaining access to needed waiver and or State Plan services, as well as needed medical, social, educational and other services, regardless of the funding source.” is consistent with the CMS definition of case management. Consistency with the federal regulations appears to stop there. The case management offered in the waiver should be provided by licensed case management entities who are enrolled with the NH MMIS system.

The language in the proposed DD waiver appears to allow for “an individual residing in the family home” to provide the case management. This in and of itself presents a clear and present conflict of interest. The language appears to leave the service under the control of the Area Agency, while allowing individual billing. If the Area Agency is responsible for qualifying the Case manager and the provision of the case management service while simultaneously maintaining responsibility for the direct services authorized and/or provided a clear and present conflict of interest remains. AGAIN. leaving the responsibilities for qualifying the case manager and oversight of the case management with the Area Agency DOSE NOT REMOVE the service coordination from the Area Agency solely by virtue of offering an alternate billing method.

The proposed waiver qualification language is not consistent with the language in the approved State Plan Amendment for the service. The State Plan Amendment isn't perfect, but it is far better than what is offered here.

Please consider the below regulation and keep in mind the words "qualified Medicaid provider" "F. Freedom of Choice (42 CFR 441.18(a )(1): The State assures that the provision of case management services will not restrict an individual's free choice of providers in violation of section 1902(a)(23) of the Act. 1. 2. Eligible individuals will have free choice of any qualified Medicaid provider within the specified geographic area identified in this plan. Eligible individuals will have free choice of any qualified Medicaid providers of other medical care under the plan."

What you describe in this definition of service coordination is not consistent with what NH defines as qualified Medicaid providers. I would strongly urge the department to remain within the parameters of actual case management and not create something else entirely as you have done for this DD waiver proposal. The department would be far better served by eliminating the provision of case management in the DD waiver system than inventing something else as you have here, to preserve current practices. Practices which are under a plan of correction.

The department's plan to move away from and not utilize the existing enrolled provider standards for case management, while simultaneously ignoring those who are actually qualified and appropriately licensed .Medicaid enrolled health facilities is egregious. NH should not allow random individuals with no qualifications other than a familial or habitat relation to enroll as Medicaid providers. This action will certainly have serious consequences.

New Hampshire has an established network of Independent Case Management Enrolled providers. Many are qualified Medicaid Providers and who are willing to work the DD waiver population. Of not, Granite Case Management is NOT willing. My only goal here is to preserve the integrity of case management in NH.

This appears to be yet another shell game to circumvent the federal requirements for which NH is under a plan of correction.

I would be more than willing to work with the department on this matter to develop a compliant quality model of case management to serve the DD population which is compliant with the applicable regulations which govern the service.

**BDS Response: The current DD waiver and renewal application outline provider qualifications for service coordination. Your feedback around case management in regard to conflict of interest will be considered as we continue to work with stakeholder groups in addressing and implementing our approved CMS Corrective Action Plan.**

**Comment:** We encourage BDS to support service coordinators statewide through training and best practices for person-centered planning and to educate people with disabilities and families about a robust person-centered planning process.

**BDS Response: Thank you for your feedback.**

**Comment:** On Page 125 of the waiver, the state indicates that "Entities and/or individuals that have responsibility to monitor service plan implementation and participant health and welfare may not provide other direct waiver services to the participant" and designates service coordinators as the individuals/entities responsible for monitoring service plan implementation. In reality, the waiver indicates that the state plans to continue to allow conflicted case management, with service coordinators employed by area agencies who also provide direct services to the individual. This is also in conflict with the state's obligation to move to conflict free case management/service coordination as required by CMS. This conflict must be addressed.

**BDS Response: Thank you for your feedback. BDS, in partnership with our federal partners at the Center for Medicare and Medicaid Services (CMS) is actively working towards our implementing the approved CMS Corrective Action Plan, including any necessary changes to Service Coordination within the waivers and rules.**

**Comment:** Page 119: How will Case Managers (Service Coordinators) document the discussions about the limits of guardianship? Will this be noted in a He-M update?

**BDS Response: Per He-M 503.09(f)(6) the Service Coordinator shall document he or she has, as applicable, maximized the extent to which an individual participates in and directs his or her person-centered planning process by: Explaining to the individual the limits of decision making authority of the guardian, if applicable, and the individual's right to make all other decisions related to services. This annual discussion shall be documented in the service agreement.**

**Comment:** Page 125 details monthly contact with individual and/or guardian and then quarterly with individual or guardian but nothing about monthly contact with service providers. In order to appropriately monitor service provision, service providers need to be contacted. This is a change from current practice, will this be addressed through the waiver or through He-M?

**BDS Response: Per He-M 503.10 (m) when an expanded service agreement has been approved by the individual, guardian, or representative and area agency director, the services shall be implemented and monitored as follows:**

**(1) A person responsible for implementing any part of an expanded service agreement, including goals and support services, shall collect and record information about services provided and summarize progress as required by the service agreement or, at a minimum, monthly;**
**(2) On at least a monthly basis, the service coordinator shall visit or have verbal contact with the individual or persons responsible for implementing an expanded service agreement and document these contacts;**
**(3) The service coordinator shall visit the individual and contact the guardian, if any, at least quarterly, or more frequently if so specified in the individual's expanded service agreement, to determine and document:**

**a. Whether services match the interests and needs of the individual;**

**b. Individual and guardian satisfaction with services; and**

**c. Progress on the goals in the expanded service agreement; and**

**(4) If the individual receives services under He-M 1001, He-M 521 or He-M 524, at least 2 of the service coordinator's quarterly visits with the individual shall be in the home where the individual resides.**

**Supported Employment**

**Comment:** Examine additional innovative and evidence-based methods of supporting employment of people with developmental disabilities.

**BDS Response: Thank you for your feedback.**

**Comment:** One commenter identified concerns about SEP funding Levels specially that they use SEP3 to bill for our independent clients who need a staff with a higher skill set but less frequently because the cost of this staff is more than a typical DSP. These Employment Staff are often ACRE trained and CESP's. The way the SEP rates look on this waiver would not allow for this. Our independent clients often appear to be low need from a health standpoint so there needs to be an additional way for us to capture this.

**BDS Response: BDS is in support of reviewing any situation that may require consideration relative to the levels that are outlined in the definition of Supported Employment.**

**Comment:** One commenter encouraged BDS to utilize innovative and evidence based employment support for people with developmental disabilities.

**BDS Response: Thank you for your feedback. The Employment Leadership committee facilitated by BDS is continually working on strategic initiatives to enhance innovative and evidence based employment supports for individuals with developmental disabilities. The link to information about this committee is as follows:** https://www.dhhs.nh.gov/dcbcs/bds/employment.htm

**Comment:** Does this cover programs like Project SEARCH that are not integrated programs but are allowing for remediated preparation for employment and occur in businesses?

**BDS Response: Supported Employment services is inclusive of training and educational opportunities to assist waiver participants to obtain competitive employment.**

**Wellness Coaching**

**Comment:** One commenter identified that on page 96, Health and wellness indicates a cap of 100 hours and does not include a rate cap. The current waiver outlines a $50 per hour cap. If operationally it will be capped at $50 per hour, we recommend that amount be documented in the waiver.

**BDS Response: The DD waiver has been revised to reflect a $5,000 annual service limit for Wellness Coaching and the cap of 100 hours has been removed.**

**Comment:** One commenter asked if there are qualifications for this wellness and coaching position (on pg. 96) in addition to services being recommended by a licensed professional. Does it need to be in writing?

**BDS Response: The provider qualifications have been updated to match the service definition to include a licensed recreational therapist or certified personal trainer. Recommendations must be documented in the service agreement.**

**Nursing**

**Comment:** Throughout the document it references following the 1201 for nursing. We recommend also including the 404 which is the NH administrative code for registered nurses as it clearly outlines the qualification, for all sections.

**BDS Response: Thank you for your feedback. Administrative rule He-M 1201 references NUR 404.**

**Comment:** Once commenter suggested that nursing services should be billed as its own service. Nursing is an important part of individual's lives. Individuals who are living independently with minimal services i.e. SEP may need the assistance of nursing oversite for med management or management of diabetes. Having Nursing as a service will allow individuals to remain independent in their homes. In the CFI waiver, this is a standalone service which allows for the medication oversite which decreases med errors by the individual and abuse of the medication by themselves, family members or other individuals. The nursing oversite will also decrease ED visits.

**BDS Response: Thank you for your feedback. BDS will review this recommendation as part of our rate setting process.**

**Participant Directed and Managed Services (PDMS)**

**Comment:** The draft waiver caps respite at 20% of the total budget for PDMS participants. This cap is not included in the current waiver. While we appreciate that the draft waiver articulates that training expenses do not count toward the 20% cap, PDMS families are often forced to use respite funds to hire Direct Support Workers because of delays in the hiring process outside of their control. With the shortage of workers in NH, it seems unlikely that this will improve in the near future. If this cap is to remain, BOS should address delays in the hiring process.

**BDS Response: Thank you for your feedback. The cap is included in the service limits section of the waiver. This issue should be addressed with the PDMS subcommittee.**

**Comment:** Under Residential Habilitation the box indicating that it can be provided in Participant Direction is not checked. It is only checked for provider managed. Our recommendation is that it is a service provided through the PDMS model as well.

**BDS Response: Thank you for your feedback. The waiver has been updated to reflect PDMS as a service delivery method.**

**Comment:** In PDMS section on page 145 in Section F, the box that states that the waiver may be directed by a non-legal representative freely chosen is not checked though in other sections of the waiver it discusses that an individual can select a non-legal person to represent them. Our

recommendation is that the sections be consistent. We are in support of an individual selecting someone to represent them.

**BDS Response: This section of the waiver pertains to the appointment of a non-legal representative directing services through PDMS. Please reference He-M 525.02 (o) and (q) to see the definition of a representative for PDMS. Individuals have the option to select a non-legal representative to assist them as noted in He-M 525.05 (b).**

**Comment:** On page 150 in the PDMS section, it discusses transition from services. It is recommending mentioning the statewide PDMS workgroup will be looking at best practices in this area to implement into the waiver.

**BDS Response: Appendix E-1, Overview of Participant Directed Services, page 139, indicates the DLTSS PDMS committee will be making recommendations which will include development and implementation of the transition policies.**

**Comment:** On page 193 it references that the PDMS stakeholder group will be using the Wisconsin "I Respect, I Self Direct" program as a model. The stakeholder group is also reviewing program models from Washington DC, Connecticut, and other best practices. It is our recommendation to include an array of programs are being looked at to represent the diverse options.

**BDS Response: Thank you for your recommendation.**

**Comment:** We appreciate the creation of the PDMS committee of families, service providers and others to identify opportunities for improvement in the PDMS waiver. We hope that BDS will look critically at the documentation requirements for PDMS participants as part of this committee.

**BDS Response: Thank you for your feedback.**

**Comment:** We appreciate that two types of PDMS services are described in the waiver. However, barriers to the employment of staff and the general shortage of direct support staff are not addressed in the waiver. We continue to encourage BDS to proactively address the workforce shortage and barriers/delays in hiring staff. We also hope that the newly established PDMS committee will address the documentation requirements for PDMS participants.

**BDS Response: Thank you for your feedback.**

**Comment:** PDMS – this was a big push for so long and it is a method of service delivery that is growing. I want to ensure this is not going to reflect badly on NH?

**BDS Response: PDMS was originally listed as a service to ensure agencies were offering it. As we move to direct billing, we started looking at rates and service delivery. Access to PDMS does not change. The Bureau remains committed to the continued implementation of PDMS services.**

**Comment:** From a structural perspective, I can go to Appendix E and I can see it is PDMS. How was PDMS covered in the waiver previously? Is Appendix E a new Appendix?

**BDS Response: Appendix E was in the previous waiver. We have removed PDMS from the services in Appendix C due to the inability to accurately pull data on services due to PDMS being bundled under other service codes. It is still a method of service delivery. Moving forward, it will be organized in a Prior Authorization to be able to run accurate data. Appendix E articulates how PDMS works and the rules associated as a service delivery option.**

**Comment:** In the past, I have been reimbursed from the Area Agency. I am using them through the PDMS plan.

**BDS Response: Thank you for your comment.**

**Comment:** On page 101 of the waiver, it defines that legally responsible adults or guardians may be paid in the PDMS model. We recommend those boxes be checked if we are to continue to permit funding as noted on page 101.

**BDS Response: The waiver indicates that guardians can be paid to provide specific waiver services. Legally responsible persons cannot be paid to provide waiver services.**

**Comment:** Regarding PDMS, I am on the committee to help with this work. There is only one other person as a family member on this committee and I am the only person receiving services through PDMS on this subcommittee.

**BDS Response: Wide stakeholder committee participation is a priority. BDS will send notification to area agency family support councils detailing the purpose of the committee and the process by which interested parties may participate.**

**Comment:** We are concerned that changing from a service to a method of service delivery will require a great deal of re-working information systems, billing set up, paperwork, tracking and back office function. We recognize this is in line with the CAP but again there are a lot of unanswered questions about the future of FMS and the rates that will apply. Will they cover the costs all of these new requirements? Moreover, the initial intent of the Participant Directed and Managed Services (PDMS) was to simplify administrative tasks which would enable those families who wanted to manage their programs the opportunity to do in a way that acknowledged the significant burdens they already carry.

**BDS Response: PDMS is changing from a "service" to a "method of service delivery" to allow for direct billing and reporting to Centers for Medicare and Medicaid Services (CMS) to track the usage of specific services, cost reporting and claims data for the Developmental Disability waiver. The state has identified the functions of the Financial Management Services (FMS) entity. FMS will be billed as a Medicaid Administrative function and will be processed though the Department's Center for Medicare and Medicaid Services (CMS) approved Public Assistance Cost Allocation Plan (PACAP).**

**Comment:** Commenters were concerned about the changes to PDMS in creating multiple levels for implementation. Concerns were voiced that this might make PDMS more complex and add additional documentation requirements which goes against the PDMS philosophy. Development of a guidance manual is a positive step, and must be done with input from families, but will not substitute for local conversation, proper planning, and service coordination.

**BDS Response: Thank you for your feedback. BDS is currently facilitating a statewide PDMS Long Term Supports and Services (LTSS) committee that includes family members to develop guidance manuals and supporting materials for individuals, family managers, providers and service coordinators to utilize to support but not replace person-centered planning practices.**

**Covid-19 Flexibilities Incorporated into the Waiver**

**Comment:** The flexibilities in terms of guidelines (home providers doing day services and family members doing services) have been really valuable to weather this pandemic in keeping individuals safe while providing services.

**BDS Response: This will continue as long as the state of emergency is active (a minimum of six months after the federal state of emergency ends). The DD Waiver renewal affords new flexibilities for supports in acute settings and other flexibilities may be reviewed and explored at a later date. Please reference provider qualifications to determine what provider is allowed to provide certain services.**

**Comment:** Many commenters were pleased to see the ability to provide care in an acute setting include in the waiver.

**BDS Response: Thank you for your feedback.**

**Comment:** Temporary support in acute setting, assume this is to staff clients in the emergency room or hospitals as inpatients. Would this include services provided to NHH or clients in jail or DRF who have no active Medicaid?

**BDS Response: Individuals who are at New Hampshire Hospital, jail or the Designated Receiving Facility (DRF) are not receiving waiver services.**

**Comment:** What is liability of staff working for agency in an acute care center if there were a notable incident or injury?

**BDS Response: Questions of this nature should be directed to the employer of record.**

**Comment:** Several commenters identified that telehealth was a new addition to services that will help promote use of technology as community living as well as in times where there may be limited access.

**BDS Response: Thank you for your feedback.**

**Comment:** There must be parity in rates for remote services and audio only must be allowed when individuals with disabilities do not have access to video or video is not appropriate.

**BDS Response: BDS will refer to Federal Guidance with regard to rates to remote services, including telehealth.**

**Comment:** We recognize that BDS is earnestly working towards a compliance deadline of 7/1/2023 for the Conflict of Interest Corrective Action Plan, but we found that including the compliance with the Corrective Action Plan (CAP) makes this draft confusing. Due to the COVID pandemic, there are many

elements to the CAP that are not yet fully developed or understood as to their impact on the overall service system. We are concerned that it is too soon to include in this draft. Does BDS intend to request a waiver amendment when the compliance deadline is closer?

**BDS Response: If there is a change that requires a waiver amendment, BDS will submit one in accordance with CMS requirements.**

**Person-Centered Planning**

**Comment:** The Quality Council continues to be concerned about whether person-centered planning is fully implemented in the development of individual service plans. The Quality Council would like to see data regarding the implementation of person-centered planning across the state.

**BDS Response: The Bureau of Development Services (BDS) remains committed to being transparent in the quality initiatives conducted and would be willing to discuss this with the Quality Council moving forward.**

**Comment:** Increase protections to ensure person-centered planning or similar planning is being implemented throughout the state and capture data related to its implementation.

The state should assure that person-centered planning maximizes the decision making of the individual with developmental disabilities, as outlined in Appendix D is actually used in developing the plan of care for all participants and the related assurances are met in all plans.

**BDS Response: Thank you for your feedback. BDS continues to support the practice of Person-Centered Planning and maximizing the decision making of the individual with developmental disabilities.**

**Operationalization of the Waiver**

**Comment:** The waiver should outline the process for managing a waiting list when the waiver is not fully funded. This waiver should articulate a process for allocating waivers when full funding is not available. This should include how to identify the need for increases in waiver funding based on individual needs that do not meet the criteria for a crisis and allocate needed resources.

**BDS Response: The waiver references RSA 171:A:1-a,I, and administrative rule He-M 503.13 which outlines the process for managing the waitlist.**

**Comment:** The state must require use of alternate interventions prior to the use of restraint or seclusion in a crisis situation related to behavior. We feel that this language could be strengthened in both the draft waiver and He-M 310.

**BDS Response: Thank you for your feedback. BDS continues to focus on this area. Please refer to Appendix G for the information regarding the administrative rules and oversight of participant safeguards. As well as the performance measures specific in this focus area.**

**Comment:** The waiver must prioritize opportunities for the person with the disability to lead decisions about his or her care, even if he or she has a legal guardian. For example, on Page 5, the waiver document indicates that individuals and/or their guardians work with area agencies and the state to identify necessary services and supports. We appreciate that legal guardians should be a part of the process but the person with the disability must be included. Similar statements are included throughout the waiver document and this must be corrected.

**BDS Response: The use of this language is intended to address all waiver participant decision making circumstances and does not minimize the individual's role in their service planning. BDS agrees with this feedback and added language to Appendix D, Participant-Planning and Service Delivery, to strengthen and support participant led service planning even if he or she has a legal guardian.**

**Comment:** As noted in the original comments, transparency of the state's oversight of the waiver and performance of area agencies is critical. Once again, we encourage BDS to regularly share data regarding this performance with the Quality Council and outline specifics of this process in the waiver document. On Page 194 of the waiver, BDS references "regular discussions of quality initiatives" with a variety of stakeholders. This is not sufficient.

**BDS Response: It is the intention of BDS to provide the Quality Council with statewide quality outcomes relative to performance measures outlined in the Waiver.**

**Comment:** There is no reference in the waiver document of transparently sharing data with the public. The BDS website is difficult to navigate and the information regarding the quality of services provided is very hard to find. This must be addressed as it is critical to a healthy, well-functioning system. The Quality Council is currently exploring how to present existing data in an easy to understand way and would be happy to help with this initiative.

**BDS Response: The Bureau of Development Services (BDS) remains committed to being transparent in the quality initiatives conducted and will continue to work with the Quality Council on these efforts. Pending improvements in BDS IT systems will allow for more accurate data collection and transparency.**

**Comment:** We continue to encourage the state to provide additional transparency in the process to develop individual budgets. As noted above, a lack of transparency can only contribute to confusion and frustration for families and people with disabilities.

**BDS Response: Thank you for your feedback. BDS is currently engaged in the development of rate setting process and will continue to provide as much transparency as possible.**

**Comment:** As noted above, there is no commitment to transparency of the budget process or to the publication of budget trends in the draft waiver.

**BDS Response: The data used for budget trends in the draft waiver were from the following sources:**

- **Actual Medicaid claims data, as processed through NH's Medicaid Management Information System (MMIS). MMIS is the system of record for Medicaid claims for DHHS. All waiver services are billed through MMIS.**

- **Actual Center for Medicare and Medicaid Services (CMS)-372 reports as submitted to CMS yearly. The CMS-372 report is generated in MMIS from Medicaid claims data to prove budget neutrality or cost effectiveness of waiver services as compared to the institutional level of care, for which each wavier participant meets in order to receive waiver services. For DD Waiver participants the institutional level of care is Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IID).**

**Comment:** We appreciate that the state has developed some more robust performance measures in the draft waiver and hope that the data around performance measures will be shared with stakeholders, including the Quality Council.

**BDS Response: Thank you for your response.**

**Comment:** We continue to be concerned about the large size of authorized facilities/community residences (16 beds) and hope that the state will support the provision of services in independent apartments, family homes or other independent settings wherever possible. If a waiver participant must be served in a facility, the state must commit to actively decreasing the size of residential facilities and serving waiver participants in smaller facilities whenever possible. We believe that facilities serve 4 or less people whenever possible.

**BDS Response: Thank you for expressing these concerns. BDS continues to expect that waiver participants are in receipt of person-centered, community based services within the least restrictive environment. In addition, BDS requires all home and community based settings to be in compliance with the CMS final settings rule. All settings serving 4 or more individuals must go through the state's heightened scrutiny process to ensure that the setting meets CMS requirements.**

**Comment:** We remain concerned that individuals are not educated about the choice of provider. We appreciate the additional detail in the draft waiver about how and when people with disabilities and family members will be informed. We hope that the state, area agencies and service coordinators ensure this education happens with all families.

**BDS Response: A Program Planning Process Acknowledgement form is reviewed and signed by every waiver participant and/or their guardian to indicate their understanding of choice of providers. This is required to be completed annually and is reviewed by BDS as part of annual Service File Reviews. As part of our Corrective Action Planning, BDS is working in collaboration with 211 and service providers to develop a statewide directory for individuals and/or their families to review options for choice of waiver providers.**

**Comment:** Other than a mention of assistance with social support by employment service providers, it does not appear that the draft waiver addresses these needs.

**BDS Response: The goal of all waiver services includes supporting individuals to achieve and maintain valued social roles as outlined in the waiver descriptions of Day Habilitation/Community Participation Supports, Residential Habilitation, Service Coordination, and Supported Employment Services. Community Integration services have also been added to the waiver application.**

**Comment:** The service array is not designed to address the specific needs of people with autism. As noted in the Governor's Commission on Disability's Analysis and Report by the Committee to Study the State's System of Support for Individuals with Developmental Disabilities and Recommendations for Reforms and Improvements issued in February 2020: (https://www.nh.gov/disability/mediaroom/documents/hb4final.pdf), the number of waiver participants with autism spectrum disorder is increasing and the lack of specialized services with evidence based outcomes for this population is a significant gap.

**BDS Response: BDS has reviewed the recommendations from the Governor's Commission on Disability's Analysis and Report and supports the need for continued efforts for the development of specialized service options. We appreciate this feedback.**

**Comment:** Remove barriers in waiver and related rules, procedures etc. related to hiring staff quickly when possible. For example, consider relaxing rules around felony convictions.

This is not addressed in the draft waiver. The waiver does not address specifics regarding the hiring of staff. The Quality Council encourages the state to address these barriers in rule and procedures.

**BDS Response: Provider qualifications are outlined in order to ensure waiver participants are safe. The waiver and state administrative rules outline a waiver process to allow for the hiring of staff that do not meet provider qualification criteria, in certain circumstances.**

**Comment**: The procedures to remove a case manager do not respect the choice of the person with a developmental disability. If a case manager must be removed, the person with a developmental disability should choose the case manager and/or case management agency.

**BDS Response: Thank you for your feedback.**

**Comment:** On Page 31, BDS indicates that there is no waiting list for the waiver. However, in reality, the waiver is not fully funded by the NH legislature each year and some people have to wait. The waiver should outline the process for managing a waiting list when the waiver is not fully funded.

**BDS Response: The waiver references RSA 171:A:1-a,I, and administrative rule He-M 503.13 which outline the process for managing the Wait List.**

**Comment:** Barriers to the employment of staff and the general shortage of direct support staff are not addressed in the waiver. We continue to encourage BDS to proactively address the workforce shortage and barriers/delays in hiring staff, include implementation of revisions to the criminal background check process.

**BDS Response: Thank you for your feedback. Workforce capacity building remains a focus area for BDS and the Department overall.**

**Comment:** Details regarding the right of individuals with disabilities and their families to complain and appeal most if not all decisions of the area agency are not included in the draft waiver. The draft waiver includes less details regarding complaints and appeals than included in the current waiver. We hope that these comments will be considered as the state revises He-M 202.

**BDS Response: These details are included in Appendix F1, and Appendix G within the waiver.**

**Comment:** Definition of complaint should be expanded. Consider: A complaint is a concern, dissatisfaction, or dispute expressed through written or verbal communication or expressed through other means, such as assistive devices, regarding: care, supports and services, action or inaction of staff, department or agency requirement, regulation or policy or other circumstances affecting quality of care or quality of life, including allegations of rights of violations.

**BDS Response: Thank you for your feedback. Please see Appendix F3 c which provides the following "Complaints are reported when there is an allegation, assertion, or indication that the following have occurred with respect to an individual: abuse, neglect, exploitation, or a rights violation pursuant to He-M 310 by an employee of, or contractor, consultant, or volunteer for an area agency or program; DHHS, the area agency, or any other program."**

**Comment:** The waiver should expand the provisions regarding access to independent advocacy. Families should be informed of all independent advocacy possibilities. Notification should occur yearly. It is critical that people with disabilities and families know how to access independent advocacy if needed. Families should be informed of all independent advocacy possibilities. Notification should occur yearly.

**BDS Response: Thank you for your feedback.**

**Comment:** The waiver does not address the availability of information about the complaint process. We hope that BDS will require area agencies and providers to make this information easily accessible as part of their contracts. Complaint process must be available on all area agency and provider websites in an easy to understand way that includes timelines.

**BDS Response: Thank you for your feedback.**

**Comment:** The draft waiver explains the state's compliance with state rules regarding notices, but these rules specifically limit when notices are required to be provided. We encourage the state to ensure notice requirements related to the denial or change of benefits or services comply with federal law in terms of both when they are to be provided and the substance of the notice itself. We encourage the state to consider using current technology to make this process more efficient and clear.

**BDS Response: Thank you for your feedback. The state's notice provisions comply with Federal requirements.**

**Comment:** On Page 162, BDS is required to "Describe how training and/or information is provided to participants (and/or families or legal representatives, as appropriate) concerning protections from abuse, neglect,and exploitation, including how participants (and/or families or legal representatives, as appropriate) can notify appropriate authorities or entities when the participant may have experienced abuse, neglect or exploitation." The current waiver described efforts to educate people with disabilities and families at conferences and training. It also describes the role of the BDS liaison to help to divert or diffuse situations which may lead to abuse or neglect.

These activities are missing from the draft waiver, which does not describe any proactive actions by BDS or the area agencies to train or inform individuals of these protections outside of required notifications that typically occur yearly. These types of standard notifications, typically occurring with the development of the Individual Service Plan, are not sufficient.

**BDS Response: Thank you for your feedback. BDS has met the requirements of CMS as outlined in the technical guide. Notification and education happens annually at the service agreement meeting and the individual/guardian signs acknowledgment of receipt.**

**Comment:** Additional protections are needed regarding the use of restraints and seclusion. This section of the waiver is vague. Moreover, the expectations needed regarding behavior plans that address when specific types of restraint should be used should be included in the waiver. We remain concerned that the use of restraint and seclusion as outlined in the waiver and He-M 310 is too broad. We're pleased that this data is being tracked and hope that this will also lead to reductions in its use.

**BDS Response: Thank you for your feedback. This recommendation will be considered when He-M 310 is revised.**

**Comment:** The state must differentiate expectations regarding specific types of restraint: physical, mechanical, chemical, etc.

**BDS Response: Thank you for your feedback. This recommendation will be considered when He-M 310 is revised.**

**Comment:** When physical or chemical restraint is included in a service plan, all caregivers must be trained on its use and alternate interventions. There should be an expectation that service providers are actively working to reduce the use of restraint, identify triggers, and assist the individual in developing alternate coping mechanisms as part of the service plan and ongoing interventions.

**BDS Response: Thank you for your feedback.**

**Comment:** The state should require a communication assessment if restraint or seclusion use increases. The state does not appear to be maximizing the use of communication assessments. We believe that communications challenges can lead to challenging behaviors and encourage the state to assess for communication needs whenever a pattern of restraint or seclusion is noted.

**BDS Response: Thank you for your feedback.**

**Comment:** We appreciate that the state is now tracking the use of restraint and seclusion via area agencies and providers. We hope that data will be transparent and made available to the Quality Council.

**BDS Response: Thank you for your feedback.**

**Comment:** The use of restraint and seclusion should more closely mimic those outlined in RSA 126 U, which governs the use of restraint on children.

**BDS Response: Thank you for your feedback.**

**Comment:** Pg.22 Risk Management Committee must submit reports annually. Is this local RMC and statewide RMC? What type of information is expected on these reports? Will this include the COP?

**BDS Response: The language cited above has been removed from the waiver application.**

**Comment:** The draft Waiver indicates that in order for an individual to be active on the waiver he or she must have at least one waivered service per month. Is this a requirement for initial eligibility only, or is this a new ongoing waiver eligibility requirement that might result in individuals "coming on and off the waiver?" If the latter part of that question is the accurate response, will this be tracked and managed through MMIS, BDS, AAs?

**BDS Response: In order for an individual to be determined to need waiver services, an individual must require one waiver service per month as documented in the service plan. The area agency is responsible to ensure that service are being provided as outlined in the service agreement. BDS has the ability to audit services provided through claims data within MMIS.**

**Comment:** We recognize the importance of having high quality data systems and useful reports to measure, assess, improve and monitor quality. That said, this waiver application adds significant amounts of reporting requirements, with no demonstrable system of returning that data to the service system in the form of contemporaneously useful information and no identified revenue to support the increased effort. We are concerned that over time, more resources are shifted away from client-facing activities in order to satisfy additional regulatory requirements that may not be adding value to the service or the individual being served.

**BDS Response: The reporting requirements as outlined in the waiver are established to ensure compliance with Centers for Medicare and Medicaid Services (CMS) sub-assurances and quality services to waiver participants.**

**Comment:** The state should work to ensure the developmental service system provide culturally competent services, including services to people who speak limited English, racially and ethnically competent services, diversity in disability, and services that respect the gender identity and sexual orientation of waiver participants.

**BDS Response: State Administrative Rule He-M 310 provides that individuals must have all their civil rights protected, including those mentioned in this comment. Additionally, the State requires that all services must be person-centered. Service planning is required to reflect the needs of the individual.**

**Comment:** We are disappointed that there is no mention of cultural competency in the waiver document. We continue to believe that it's critical that BDS and the area agencies activity support efforts to ensure culturally competent services for all waiver participants. Information should be available in multiple languages for both waiver participants and service providers/employees.

**BDS Response: See above response.**

**Comment**: The waiver must prioritize opportunities for the person with the disability to lead decisions about his or her care, even if he or she has a legal guardian. We recommend ensuring that all decisions for a person's services include that individual to the extent possible.

**BDS Response: BDS agrees with this feedback and added language to Appendix D, Participant-Planning and Service Delivery, to strengthen and support participant led service planning even if he or she has a legal guardian.**

**Comment:** To the extent possible, the waiver should identify processes that will aid in consistence of service provision throughout the state area agency system and private provider Network.

**BDS Response: Thank you for your feedback.**

**Comment:** We did not find evidence of increased expectations for training in the draft waiver. We encourage BDSto actively engage families and the Quality Council in the development of training expectations and modules. We believe that increased training for families, provided in a variety of formats, can better help families understand their rights and how to advocate for the services that they need. Training should be given more attention. The state must work to ensure training for direct support staff is robust and person-centered.

**BDS Response: Thank you for your feedback.**

**Comment:** The Bureau of Developmental services (BDS) should prioritize opportunities to gather input from ALL interested families and stakeholders, and also share the results of the information gathered. Whenever possible, results should be published on the BDS website in an easy to find way within 30 days.

**BDS Response: Public Comment will be posted to BDS website.**

**Comment:** The state should gather and regularly publish data on budget trends including analysis of budget data based on class, race, socio-economic status and other disparate or underserved groups.

**BDS Response: Thank you for your feedback.**

**Comment:** All providers must comply with the HCBS settings rules, particularly in facilities with more than three beds. The state should minimize the exceptions that fund services for residential facilities that serve more than 4 individuals with developmental disabilities.

**BDS Response: Thank you for your feedback.**

**Comment:** It is important that individuals and families are consistently and regularly educated about provider choice. We hope that the state, area agencies and service coordinators ensure this education happens with all families.

**BDS Response: Thank you for your feedback.**

**Comment:** The service array is not designed to address the specific needs of:
People with autism.
People who are deaf and deaf/blind.
People who use alternate communication methods such as ASL or other signing.

**BDS Response: If an individual who is deaf, blind or diagnosed with autism meets the eligibility criteria of the Waiver, that individual will have access to Waiver services. Additionally, if they require alternative communication methods, this will be noted in the person-centered plan.**

**Comment:** The waiver does not address the inconsistent document requirements from different Area Agencies.

**BDS Response: Thank you for your feedback.**

**Comment:** The waiver does not address specifics regarding hiring staff. It is recommended, to the extent possible, processes to obtain waivers and exemptions that remove barriers in the hiring of staff quickly.

**BDS Response: Thank you for your feedback.**

**Comment:** Grievances and appeals process including the requirements for notices must comply with federal Medicaid laws.

**BDS Response: Thank you for your feedback.**

**Comment:** The state should require notification of serious injury or death in restraint or seclusion to DHHS, Attorney General, and Disability Rights Center.

**BDS Response: Thank you for your feedback.**

**Comment:** The state should ensure that waiver services to individuals with intensive treatment service (ITS) needs are provided in a manner that respects the rights and promotes the inherent dignity of the individuals served; promotes their maximal involvement in community activity while balancing their right to be supported in ways that do not trigger challenging behaviors; allows for treatment that is evidence-based and individualized; and are reviewed at a frequency which allows for timely modification of supports and services which matches the individual's progress.

Services for people with intensive needs are not well integrated in the waiver and there are sometimes gaps. The state must consider how the waiver can provide the specialized services to meet the needs of this population that may be different from other waiver participants. Consider the recommendations from the SB 86 and HB 4 reports in this area.

The service planning process and determinations of service provision for people in the ITS system must outline the right of the person with a developmental disability or family member to appeal.

**BDS Response: Thank you for your feedback.**

**Comment**: On page 101, section d, Provision of Personal Care or Similar Services by Legally Responsible Individuals is checked as no. Section e, Other state policies concerning payment for waiver services furnished by Relatives and Legal Guardians is checked yes. – relatives / legal guardians may be paid for providing waiver services whenever relatives/legal guardian is qualified as specified in appendix C-1/C-3. It is recommended to provide clarity. In the current waiver there is specific criteria and requirements of documentation. It is our recommendation that this section is reviewed and if relatives/ parents/ legal guardians are to be paid (which we support) we request that criteria be set, and documentation be clearly identified to support implementation.

**BDS Response: Thank you for your feedback. The Bureau will take this recommendation under consideration.**

**Comment:** Page 122: There is nothing noted regarding guardian's ability to extend the service agreement in this rule.

**BDS Response: Page 122 of the waiver outlines discussing risk assessment and mitigation.**

**Comment:** Page 142: Is it intended that the Area Agency Nurse trainer review all HRST HCL's of 3 or above or can it be a Nurse Trainer through a vendor if the services are provided by a vendor? Will this change when "Direct Bill" begins as part of the DAADS requirement or before?

**BDS Response: Thank you for your feedback. The waiver language has been updated to state, "For participants that have a HRST, Health Care Level (HCL) score of 3 or over, a clinical review will be conducted by a nurse trainer." The impact to direct billing will be determined as part of the rate setting process.**

**Comment:** Pg. 150-157 Clarification needed: when a Risk Assessment states PDMS is not an appropriate model due to client profile of moderate to high level of risk, does this give the client one year from the time of the evaluation to change models?

**BDS Response: A time limit has not been prescribed in He-M 503 or He-M 525.**

**Comment:** Appeals based on 2nd opinion evaluations from experts who do not have an understanding of our system will be accepted?

**BDS Response: Per He-M 525.03(f), the individual may obtain a second opinion from a New Hampshire licensed psychologist or psychiatrist.**

**Comment:** Pg. 164 HRC should be reviewing Service agreement in addition to behavior plans. This seems beyond the capacity of one volunteer committee….

**BDS Response: The duties of the Human Rights Committee are outlined in 171-A:17.**

**Comment:** Many of the service level caps haven't been adjusted in over a decade. It is our understanding that BDS is not required to put dollar amounts in the waiver application. A bigger concern is that while there is likely always a need for the BDS administrator to have the authority to extend authorization above a cap level, this may lead to the creation of a system of "haves and have-nots." We

request that any intended caps continue to be examined for their relevance to present day costs in order to avoid the need for multiple levels of time-delaying approvals.

**BDS Response: Thank you for your feedback.**

**Comment:** When we have services in the waiver, will this result in the need to change the Administrative Rules?

**BDS Response: Yes. BDS, upon waiver approval, will consider and adjust rules as needed.**

**Comment:** The state should continue to move towards conflict-free case management in compliance with CMS recommendations. Whenever possible individuals and families must be presented with choices that support conflict-free case management.

**BDS Response: Thank you for your comment. CMS granted an extension on the compliance date for the Corrective Action Plan to July 1, 2023. You may find this approval letter at this link: https://www.dhhs.nh.gov/dcbcs/bds/coi-cap.htm.**

**Comment:** Regarding provider selection, Service Coordinators do not talk about this directly saying you can choose specific agencies. I don't think many people know they have the right to choose.

**BDS Response: A Program Planning Process Acknowledgement form is reviewed and signed by every waiver participant and/or their guardian to indicate their understanding of choice of providers. This is required to be completed annually and is reviewed by BDS as part of annual Service File Reviews.**

**Comment:** Regarding the HRST, when this is completed is the area agency supposed to do anything with the recommendations that are identified from the HRST? There was no follow up from my HRST and it was just said "no actions taken"

**BDS Response: The Health Risk Screening Tool (HRST) is a tool that determines the individual's level of risk. The recommendations that the platform help inform the team's next steps. If you are in charge of the services in your plan and you want to see the recommendations happen, you should contact your service coordinator/team to ask for follow up to happen.**

**Comment:** What page numbers in the waiver are associated with the details of compliance with the Home and Community Based Service's (HCBS) Final Rule and Regulations per 42 CFR 441.301(c)(4)?

**BDS Response: The page number of the waiver is 115, Appendix C-5.**

**Comment:** Levels of services in the DD waiver draft are designated by clinical support needs. They are currently defined by budget needs. It is recommended to review these levels in the same timeline as our upcoming transition to rate setting. The DD waiver is to be implemented on 7/1/21 and the rate setting is not required to be in place until our Corrective Action Plan is due in 2023.

**BDS Response: Thank you for your comment.**

**Comment:** How are levels of care covered in the waiver? Are there specific definitions addressing this in the waiver or is this left up to regulations outlined outside of the waiver? How do you tie levels to reimbursement?

**BDS Response: Appendix B in the Waiver outlines the Level of Care and eligibility process. The service funding levels are determined on an individualized basis and will be considered through the rate setting process as outlined in the CMS Corrective Action Plan.**

**Comment:** I think it's important for the State to continue to move forward with CMS compliance in all areas.

**BDS Response: Thank you, we are continuing with our efforts toward compliance with the CMS Corrective Action Plan Requirements.**

**Comment:** Will these slides be available to use as a reference when drafting written comments?

**BDS Response: It is recommended that interested parties visit to the Department's website and review the DD Waiver in its entirety.**

**Comment:** One stakeholder group identified that the public comment period was not long enough due to the Pandemic and vaccine rollout.

**BDS Response: BDS provided listening sessions as well as public comment sessions. The listening sessions and the public comment sessions were held remotely via Zoom. The public comment period included a thirty day period of time. Public notice was provided on the DHHS website and was published in two statewide newspapers. BDS has met the expectations of CMS within the desired timeframes.**

**Comment:** As a general recommendation, it is apparent that the Centers for Medicaid and Medicare Services (CMS) has increased their expectations to the quality review of services and documentation of services, assurances, and quality performance measures. It is our recommendation that once the waiver is approved that BDS not only roll out sessions to educate on the services in the waiver but also develop sessions specific to what is going to be expected to support the quality assurances and performance measures so we may build them in the operations of services and work collaboratively with BDS to use technologies and current operations to fulfill these requirements proactively.

**BDS Response: BDS will offer specific training sessions on the DD Waiver to include an overview of sub assurances and performance measures.**